

**Elite Marine Service, Ltd. d/b/a Big Apple Launch and Local 333, United Marine Division, International Longshoremen's Association, AFL-CIO.** Cases 29-CA-14981, 29-CA-15453, and 29-CA-15551

June 14, 1993

# SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On March 19, 1992, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> *inter alia*, ordering Elite Marine Service, Ltd. d/b/a Big Apple Launch to make whole certain of its unit employees for loss of earnings and other benefits resulting from their discharges in violation of the National Labor Relations Act. According to the backpay specification, on or about September 8, 1992, the Respondent and the General Counsel entered into a stipulation in which Respondent waived its right to contest either the propriety of the Board's Order issued March 19, 1992, or the findings of fact and conclusions of law underlying that Order.

A controversy having arisen over the amount of backpay due discriminatees, on December 31, 1992, the Regional Director for Region 29 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent has failed to file an answer.

By letter dated March 31, 1993, counsel for the General Counsel advised the Respondent and its attorney that no answer to the compliance specification had been received and that unless an appropriate answer was filed by April 23, 1993, summary judgment would be sought. The Respondent filed no answer.

On May 18, 1993, the General Counsel filed with the Board a Motion for Summary Judgment where the

Respondent has failed to file an answer with exhibits attached. On May 20, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

## Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees at this time<sup>2</sup> is as stated in the compliance specification and we will order payment by the Respondent to the discriminatees.

<sup>2</sup> The compliance specification sets forth computations of backpay up to the time of issuance of the specification with the proviso that the backpay period for each discriminatee continues in the absence of valid offers of reinstatement. Footnote 1 of the compliance specification further states that because the Respondent has failed to provide its payroll and other requested records, the Region reserves the right to claim additional hours of work and increased rates of pay upon production and review of these records. In the absence of any opposition to this reservation, we approve the reservation as stated by the General Counsel.

<sup>1</sup> 306 NLRB 735.

## ORDER

The National Labor Relations Board orders that the Respondent, Elite Marine Service, Ltd. d/b/a Big Apple Launch, Staten Island, New York, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus any additional backpay which may accrue in the absence of valid offers of reinstatement,<sup>3</sup> with interest to be computed in the man-

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<sup>3</sup>Inasmuch as we have already ordered the Respondent, on March 19, 1992, at 306 NLRB 735, to offer Joseph Fitzgerald, James Behan, and John McGowan immediate and full reinstatement to their

ner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

|                   |        |
|-------------------|--------|
| Joseph Fitzgerald | \$4490 |
| John McGowan      | 2670   |
| James Behan       | 8080   |

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former jobs or, if those jobs no longer exists, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and to make these individuals whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, we deny, as unnecessary, the General Counsel's motion to repeat that Order here.